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REMARKS

Applicants courteously solicit favorable reconsideration of this application upon entry of the present Amendment.

Applicants present elected claims 1-7, 16-18, and 21 from the application as filed and add claims 22 and 23, which new claims should be grouped with the elected claims. Attention is invited to paragraph [0031].

Claims 1-7, 16-18, and 21 include the expression "stabilized starch." The expression is written for those skilled in the art; therefore, it is courteously submitted these claims are clearly definite when read, as they should, in view of the present specification. Antecedent basis for this expression in the specification as filed, e.g., in paragraphs [0017], [0021], [0023], [0026], [0030], and [0031], makes plain that those skilled in the art are familiar with the term. Attention is directed to paragraph [0031], in particular, as it discloses a preferred method for obtaining a stabilized starch N-alkenyl succinate by treating a starch N-alkenyl succinate with active chlorine.

Applicants traverse the rejection of claims 1-7, 16-18, and 21 under 35 U.S.C. §103(a) as being unpatentable over Kettlitz et al. (U.S. 6,235,894) in view of Daenzer-Alloncle et al. (U.S.

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6,139,896). It is respectfully submitted that the rejected and added claims are both novel and unobvious over the cited references.¹

Applicants courteously submit the references do not teach the present inventions, would not have been combined, and furthermore even if, *arguendo*, they were combined the elected claimed inventions would have been unobvious to a person of ordinary skill in the art.

The elected claims pertain to a UHT-treated, product that has a relatively low viscosity after heat treatment (UHT). It can be sterilized. The UHT-treated product is reheatable and when reheated exhibits a viscosity increase as recited in claim 1 as an example.

In contrast, the primary reference, Kettlitz '894, is wide of the mark as it discloses stabilized starches that only maintain/retain their pre-existing viscosity even after reheating. In other words, Kettlitz '894 teaches away from the presently claimed invention.

In the Abstract, Kettlitz specifically refers to "heat-stable high viscosity starches". At column 4, lines 5-16, Kettlitz '894 states:

¹ Applicants are traversing the rejection under the assumption that the Kettlitz reference cited in the Office Action means U.S. 6,235,894, not the EP 0 811 633, mentioned in the Office Action in the fourth line from the bottom of page 2. If this understanding is incorrect, a new Office Action resetting the period for response is in order.

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The starches of the present invention show only a slight decrease of viscosity during the measurement with the Brabender viscomograph, preferably the drop in viscosity is less than 20%, more preferably less than 10% during heating at 95°C.

Accordingly, Kettlitz '894 specifically indicates to those skilled in the art that its stabilized starches should not manifest an increased viscosity upon reheating or further heat treatment. Kettlitz '894 specifically states that the viscosity is retained/maintained with only minimal decreases upon reheating or further heat treatment.

Therefore, Applicants submit that:

- Kettlitz '894 does not disclose UHT-treated food products. Kettlitz '894 does not specifically disclose UHT treatment of a food product. This stands acknowledged in the Office Action at page 5, penultimate paragraph, with which Applicants concur.
- Kettlitz '894 does not additionally disclose reheating a UHT-treated food product.
- Kettlitz '894 does not disclose, describe, or suggest that a reheated UHT-treated food product would demonstrate an increase in viscosity in accordance with Applicants' elected claims.

Next, Applicants submit Kettlitz '894 would not have been combined with the secondary reference to Daenzer-Alloncle simply

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because the latter product is not even meant for reheating. Therefore, if one of ordinary skill in the art were considering a reheatable UHT-treated product and considering viscosity retention or even increasing viscosity, the secondary reference to Daenzer-Alloncle would not have been among the information and literature considered.

Indeed, the secondary reference seeks to provide a **fluid** lactic cream having good viscosity despite reduced fat content. The secondary reference requires that no phase separation occur during storage as can be seen in column 1, lines 20-25. The flavored cream can be used for cooked, fresh, refrigerated, or deep-frozen dishes. The flavored sweet cream can also be used as a topping on fruit or ice cream or even as a dessert cream. The cream obtained can be preserved at room temperature for 6-12 months, during which time there should be no separation of fat and no formation of whey, as further described at column 2, lines 40-43. This is entirely consistent with Examples 1-4 in the secondary reference.

Therefore, taking the combined references at face value, the use of a stabilized heat-treated starch according to the Kettlitz '894 patent, even if considered with the non-UHT-treated product according to Daenzer-Alloncle, would simply have led - *arguendo* - to a product having a retained/maintained viscosity and that might be

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storage-stable. It is said to be "might be" because there is nothing according to the Kettlitz '894 patent that would have commended its products for a long-term storage-stable cream product as described and required by the secondary reference to Daenzer-Ailloncle.

In short, even if *arguendo*, a low viscosity after UHT and a high viscosity after reheating might be an inherent feature of the starches recited in Applicants' claims, the person of ordinary skill in the art would find no incentive or reason to select for UHT-treated products that particular starch for solving Applicants' problem.² Restated, Applicants confronted a problem needing a solution, namely, the provision of a heat-treated, sterilized product having a relatively low viscosity after heat treatment, but displaying an increased viscosity when reheated. Indeed, a person skilled in the art would not even have regarded the products of Kettlitz' 894, which are starches stabilized with stabilized with active chlorine, as even being suitable for solving such a problem, since the reference neither mentions UHT-treatment and, furthermore, is simply directed to products that maintain a high viscosity upon reheating or cooling. These gaps in the teachings of the prior art

² The inherency of an advantage and its obviousness are entirely different questions, because that which is inherent is not necessarily known. *In re Sporman*, 150 U.S.P.Q. 449, 452 (CCPA 1967).

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cited against the claims are not bridged by the cream products according to Daenzer-Alloncle.

Applicants, therefore, courteously solicit favorable reconsideration and allowance. Upon indication of allowable subject matter, Applicants authorize the Examiner to cancel without prejudice or disclaimer the non-elected claims in order to place the application in condition for allowance.

The Examiner is courteously invited to contact Applicants' legal representative in an effort to resolve any remaining issues.

To the extent necessary during prosecution, Applicants hereby request any required extension of time not otherwise requested and hereby authorize the Commissioner to charge any omitted fee required to secure entry of this Amendment, including application processing, extension, and extra claims fees, to Deposit Account No 06-1135.

Respectfully submitted,
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